

REMARKS

In the Office Action, the Examiner states that this application contains the following fourteen (14) groups of inventions that are not so linked as to form a single general inventive concept under PCT Rule 13.1. The Examiner requires Applicants to elect a single invention in compliance with 35 U.S.C. §§121 and 372.

- | | |
|-------------|---|
| Group I. | Claims 1, 7-30 are drawn to improve plant productivity using either a endophytic actinomycetes or metabolite from an endophytic actinomycete strain with a specific SEQ ID listed in claim 1. |
| Group II. | Claims 2, 7-30 are drawn to a method to improve plant productivity using either a endophytic actinomycetes or metabolite from an endophytic actinomycete strain with a specific SEQ ID listed in claim 2. |
| Group III. | Claims 3, 7-30 are drawn to a method to improve plant productivity using either a endophytic actinomycetes or metabolite from an endophytic actinomycete strain with a specific SEQ ID listed in claim 3. |
| Group IV. | Claim 31 are drawn to a method to improve plant productivity using either a endophytic actinomycetes or metabolite from an endophytic actinomycete strain listed in claim 31. |
| Group V. | Claim 32 is drawn to an endophytic actinomycetes or metabolite from an endophytic actinomycete strain listed in claim 32. |
| Group VI. | Claim 22 is drawn to an endophytic actinomycetes or metabolite from an endophytic actinomycete strain listed in claim 33. |
| Group VII. | Claim 34 is drawn to an agriculture composition comprising an endophytic actinomycetes or metabolite from an endophytic actinomycete strain listed in claim 34. |
| Group VIII. | Claim 35 is drawn to an agriculture composition comprising an endophytic actinomycetes or metabolite from an endophytic actinomycete strain listed in claim 35. |
| Group IX. | Claims 36, 38, 39 are drawn to a novel endophytic actinomycetes strain with a SEQ ID listed in claim 36 and their metabolites. |

- Group X. Claims 37-39 are drawn to a novel endophytic actinomycetes strain with a SEQ ID listed in claim 37 and their metabolites.
- Group XI. Claim 40 is drawn to a method using the endophytic actinomycetes strain or metabolite from Group IX or X to improve plant growth.
- Group XII. Claim 41 is drawn to a method using the endophytic actinomycetes strain or metabolite from Group IX or X to biodegrade material.
- Group XIII. Claims 42-44 are drawn to a method using the endophytic actinomycetes strain or metabolite from Group IX or X to treat a condition in a subject.
- Group XIV. Claim 45 is drawn to a method using the endophytic actinomycetes strain or metabolite from Group IX or X to manufacture a composition for agricultural application.

The Examiner has also required further election of species, as set forth on pages 4-11 of the Office Action.

In order to be fully responsive to the Examiner's requirement for restriction, Applicants provisionally elect Group IX, claims 36, 38, 39, drawn to a novel endophytic actinomycetes strain with a SEQ ID listed in claim 36 and its metabolites. In connection with the requirement for species election, Applicants provisionally elect (a) the endophytic actinomycete organism and (b) SEQ ID NO: 7 (EN16). Further, within Group IX, claim 36 specifically reads on the elected organism and sequence identifier; and claims 38-39 depend on claim 36 and therefore indirectly read on the elected species.

Further, Applicants wish to direct the Examiner's attention to the fact that on page 8 of the Action, the Examiner has required Applicants to elect a species from claim 37. It is believed that the Examiner intended that Applicants elect a species from claim 36, because the subject matter of claim 37 falls into Group X, not Group IX, as defined by the Examiner (page 3 of the Action); and further, in defining Group IX (on page 3), the Examiner states that claims

36, 38, 39 are drawn to a novel endophytic actinomycetes strain with a SEQ ID listed in claim 36.

Applicants wish to remind the Examiner of the provisions in 37 C.F.R. §1.141, i.e., upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations or an allowable generic claim as provided by.

Further, Applicants note that the Examiner has required restriction between product and process claims. Applicants wish to remind the Examiner of the provision of MPEP §821.04, i.e., where Applicants elect claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined.

Finally, Applicants respectfully submit that a determination to make the pending restriction requirement final must evidence the patentable distinctness of all defined groups and sequences, one from another, as presented by the Examiner.

It is respectfully submitted that the present claims satisfy the requirements for unity of invention. Applicants respectfully urge that the Examiner reconsider and withdraw the requirement for restriction and provide an action on the merits with respect to all the claims.

Respectfully submitted,



Xiaochun Zhu

Registration No. 56,311

SCULLY, SCOTT, MURPHY & PRESSER, P. C.
400 Garden City Plaza-STE 300
Garden City, New York 11530
(516) 742-4343
XZ:ab